Supreme Court of the United States

October Term, 1951

No. 595

JOHN W. WOOLLEY, PETITIONER,

v.

STATE OF MICHIGAN.

Brief opposing Petition for Certiorari

I

Opinions of Courts Below.[*]

The only opinion of the trial court or the Michigan Supreme Court on any subject whatsoever to which reference can be made,[1] is the finding of fact of the circuit court adjudging the petitioner guilty (37-39) at the close of a trial without jury (8-36). No Michigan court expressed an opinion on any federal question, or on any claim of deprivation of federal rights under the Due Process Clause

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[*] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed record of the Michigan Supreme Court.

[1] The petition for certiorari, and the supporting brief fail to cite any judicial opinion.

of the Fourteenth Amendment, or on the constitutional validity of the statute under which the petitioner was prosecuted for crime. No opinion was written by the Michigan Supreme Court in denying (44) petitioner's application for leave to appeal, or in denying (46) the motion to reconsider such application.

II

Counter-Statement on Jurisdiction.

It is apparent that certiorari is timely sought and jurisdiction of this Court is invoked under Title 28 U.S.C. § 1257 (3), but we are not in accord with the thought that the Supreme Court of the State of Michigan, in denying leave to appeal, decided a federal question, or that in the trial court or the Supreme Court, a federal question was timely raised.

Our position is quickly summarized:

1. In the circuit court for the county of Cheboygan, no title, right, privilege or immunity was specially set up or claimed under the Constitution of the United States, nor was such a claim timely asserted on application (4-6) for leave to appeal to the Supreme Court of the State of Michigan, and the validity of the state statute defining petitioner's crime was never drawn in question on any ground:

(a) in the trial court, at the close of the State's case (26), no motion was made by the defense to adjudge petitioner not guilty for lack of sufficient proof; much less did his counsel assert that for lack of such proof, due process of law had been denied;

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(b) nor was such a motion made by the defense at the close of its case (36); and petitioner's counsel filed in the circuit court no motion for new trial;

(c) in the circuit court of trial, no motion was made to quash the information (42) on the ground that the statute defining the offense there charged, violated the Due Process Clause of the Fourteenth Amendment;

(d) while petitioner, in his application for leave to appeal, alleged (4-6) that the trial court erred in finding any evidence to sustain a conviction, he did not claim that this deprived him of due process of law; nor did he draw in question the constitutional validity of the statute defining the offense charged in the information;[2] and he raised no federal question of any kind or nature;

(e) on motion (2) for rehearing his application for leave to appeal, petitioner asserted for the first time in any court, and then too late, that his conviction without evidence to support it, was a denial of due process of law under the Fourteenth Amendment; indeed, he readily conceded that such constitutional issues were not expressly raised in his application for leave to appeal, and, he stated, "presumably not passed upon by the Justice reviewing the original application for leave to appeal;" but even at this late date, counsel failed belatedly to challenge the constitutional validity of the state statute defining the offense.

2. A substantial federal question is not presented for decision in this cause, nor did the courts below decide it.

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[2] Michigan Penal Code, § 338, Comp. Laws of Michigan 1948, § 750.338, Mich. Stat. Ann. (Henderson) § 28.570.

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III

Counter Statement of the Matter Involved.

Laying aside all argumentative matter, as well as counsel's broad conclusions of law, petitioner's statement of the matter involved might well be accepted. The revolting details of the crime committed upon a 14-year-old boy by this degenerate offender against common decency, as they appear in the printed record (8-36), require no repetition in this brief, and we do not propose to dwell upon them.

IV

Reasons for opposing Certiorari.

First:

In the trial court no fundamental right was specially set up or claimed under the Constitution of the United States, nor was the validity of a state law drawn in question as repugnant thereto.

Since the state's position is, we trust, clearly stated in our counter-statement on jurisdiction, it is deemed essential to detain the Court on this question for only a short length of time.

If, as we most respectfully suggest, the petition now pending may be treated as an application for certiorari to the court of trial rather than the Michigan Supreme Court,[3] it suffices to say that in the circuit court, counsel

[3] Norfolk etc. Turnpike Co. v. Virginia, 225 U. S. 264; 28 U. S. C. A., 1257, note 18, pp. 106-108, and cases cited.

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for the accused asserted no right under the Due Process Clause of the Fourteenth Amendment.

Of course, it goes without saying that under § 1257 of Title 28 of the United States Court, as revised, this Court will assume no jurisdiction in certiorari proceedings to review the judgment of a State court unless the precise federal question presented was specially, specifically, and particularly raised in the court below.[4]

Second:

Nor were such rights timely asserted in the Supreme Court of the State of Michigan.

As will clearly appear in our counter-statement on jurisdiction, no federal question was raised in petitioner's application to the Michigan Supreme Court, for leave to appeal from the judgment of the circuit court for the county of Cheboygan. The first mention of the Constitution of the United States, or the Due Process Clause of the Fourteenth Amendment, came in petitioner's motion (2) for reconsideration of the Court's order denying such application.

Under decisions of this Court, the question arrived in the record too late to justify review on certiorari.[5]

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[4] Michigan Sugar Co. v. Michigan, 185 U. S. 291.

[5] Herndon v. State of Georgia, 295 U. S. 441, rehearing denied, 296 U.S. 661; Godchaux v. Esopinal, 251 U. S. 179; Mergenthaler v. Linotype Co., 251 U. S. 256; Rooker v. Fidelity Trust Co., 261 U. S. 114; and American Surety Co. v. Baldwin, 287 U. S. 156.

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V

Conclusion.

We therefore respectfully submit that since the Federal questions here presented, were not raised in the trial court, and when presented to the Supreme Court came too late, the application for writ of certiorari should be denied.

Respectfully Submitted,

Frank G. Millard
Attorney General of the State of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Daniel J. O'Hara
Assistant Attorney General

For Respondent
The Capitol, Lansing 2, Mich.

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